

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mark D. Feierstein  
Lieutenant Colonel, Corps of Engineers  
District Commander  
On Behalf of the General Public

Permit No.: 77-000-5

Processing No.: Sample Regional Permit

Effective Date: June 14, 1999

Expiration Date: June 14, 2004

Affirmation Date: This permit has NOT been affirmed

Issuing Office: U.S. Army Engineer District, Buffalo  
1776 Niagara Street  
Buffalo, New York, 14207-3199

**IMPORTANT:** PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS OF THIS PERMIT MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

**AUTHORITIES:** You have been authorized to undertake the activity described below pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

**AUTHORIZED ACTIVITY:** The installation and maintenance of bubblers, submerged wires, cables, and utility lines, including shorewells and other small water intakes that have received written affirmation of permit applicability from the U.S. Army Engineer District, Buffalo. A "wire" or "cable" is defined as any medium used for the transmission of electrical energy, telephone or telegraph messages and radio or television communication. A "utility line" is defined as any pipe or pipeline used for the transportation of any gaseous, liquid, liquefiable, or slurry substance. Bubblers and flow activation devices are used to keep selected areas ice free during cold weather periods.

**LOCATION OF THE AUTHORIZED ACTIVITY:** Navigable waters of the United States

that are located within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo.

The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided the following general and special conditions are fully complied with.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must begin within one year of the affirmation date and must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective date(s).
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, unless you make a good faith transfer to a third party in accordance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

6. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual permit or any letter of permission.

SPECIAL CONDITIONS:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

2. Prior to or immediately following completion of the activity authorized by this permit you shall contact the U.S. Coast Guard to determine if any safety lights or signals are required. You should have the following information available: project location indicated on a nautical chart, scale drawings of the structure(s), the structure's height above the waterway bottom, and the mean low water (MLW) depth over the structure(s). If directed by the U.S. Coast Guard you shall install and maintain these devices at your expense. The U.S. Coast Guard can be reached by calling (216) 902-6074, by fax at (216) 902-6071, by email to [FRichter@uscg.mil](mailto:FRichter@uscg.mil), or by writing to:

U.S. Coast Guard  
Ninth Coast Guard District  
1240 East Ninth Street  
Cleveland, Ohio 44199-2060  
ATTN: PATON Desk

3. Wires, cables and utility lines to be located below the Ordinary High Water elevation must be placed on the natural bottom of the waterway, or where necessary, in a shallow trench. Structures placed over a navigable water shall run along a dock, bulkhead, bridge, or other framework so as not to interfere with navigable use of the waterway.

4. Where necessary, dredging is limited to the minimum amount needed to excavate a shallow trench, and to the maximum extent practicable, shall be performed during low water periods. Trenches must be backfilled with the material dredged from the trench or clean granular material from an upland source and to the extent possible, the waterway bottom shall be restored to its preconstruction contours. Any areas of the shoreline disturbed during installation shall be restored to pre-installation conditions and stabilized by seeding and mulching. Riprap or other methods of shore protection may be placed provided that it is authorized by a separate individual, regional or nationwide permit. Special work and disposal methodologies, as specified by the District Commander, will be required for installation in areas containing polluted sediments.

5. Where applicable, any temporary or permanent discharges of dredged or fill material must be in accordance with the Nationwide Permit(s) contained in Title 33 of the Code of Federal Regulations, Part 320 et seq. Unless authorized by Nationwide Permit(s), all dredged material shall be deposited on upland property well removed from waters of the United States, including wetlands, and shall be properly stabilized to prevent reentry into these waters.

6. Wires, cables and utility lines located in Federal Harbors or project areas must meet minimum clearance requirements specified by the District Commander.
7. Wires, cables and utility lines must be in conformance with applicable State and/or local codes for use in water crossings.
8. Bubbler systems shall be operated in such a manner so that the area of open water is restricted to the dock(s) and boat(s) tied up to the dock(s). Under no circumstance shall the area of open water extend beyond the common boundary line of adjoining properties that are under separate ownership.
9. For activities and structures located in New York State Significant Coastal Fish and Wildlife Habitats, you must furnish the New York State Department of State (DOS) with a certification statement that your action is consistent with the State's Coastal Management Plan. Activities and/or structures located in these Significant Habitats are approved by this regional permit only when you obtain an individual consistency certification concurrence for your project from the DOS. No work shall be started under this permit until the concurrence has been secured or the State has failed to act on the consistency certification within six months and the certification is presumed. You must comply with all conditions of your individual Coastal certification concurrence. In addition, you must furnish the District Engineer, Buffalo District, with a copy of the DOS certification concurrence letter or a **dated** copy of the consistency certification that you provided to the DOS.

Consistency statements should be forwarded to:

New York State Department of State  
Division of Coastal Resources  
41 State Street  
Albany, New York 12231-0001

Telephone (518) 474-6000

10. The District Commander reserves the right to include any additional special conditions.  
EXCLUSIONS:

This permit does not apply to:

1. Activities that have an effect on historic, cultural or archaeological sites identified in the latest published version of the National Register of Historic Places, or sites eligible for inclusion in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.
2. Activities that have an effect on sites included in the latest published version of the National Register of Historic Landmarks, which are published periodically in this register,

unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.

3. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this regional permit.

4. Activities that have an effect on a component of the National Wild and Scenic Rivers System, or areas listed in the Nationwide Rivers Inventory, Final List of Rivers for New York as published by the U.S. Department of the Interior, or in a component of a State Wild and Scenic River. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service and/or the New York State Department of Environmental Conservation.

5. Activities that have an effect on rivers currently being studied at the direction of Congress as potential additions to the National Wild and Scenic Rivers System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

6. Structures which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended.

7. Activities performed or proposed, unless the property owner has submitted a written request for authorization describing the activity, and the District Commander has determined that it complies with the terms and conditions of this permit.

#### LIMITS OF THIS AUTHORIZATION

1. The granting of this permit does not obviate the need to obtain other Federal, State or local authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24 or 34 may be required from the New York State Department of Environmental Conservation.

2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.

3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.
3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33 of the Code of Federal Regulations Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity

authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

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District Commander

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Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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Transferee

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Date